IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2289 OF 2005

Janardan Shankarrao Kore
and ors. .. Petitioners

Vs.

Rangrao Mahado Tate .. Respondent

Mr. P.S. Dani for petitioners.
Mr. Raj Jaysing Khude for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 08, 2006.

P.C.:

1. Heard Mr. Dani the learned counsel for the petitioners and Mr. Khude the learned counsel for the respondent.

2. The respondent had filed Regular Civil Suit No.1669 of 2000 for mandatory injunction and possession of the property situated at Kasba Karveer Kolhapur at R.S.No.529/1, Plot No.29, admeasuring 260.86 sq.mtrs. The said suit came to be decreed as per the order of the learned 8th Joint Civil Judge, Jr. Division, Kolhapur on 31/10/2002. The present petitioners, who were the defendants in the said suit

had suffered the decree at the hands of the trial court, challenged it in Regular Civil Appeal No.122 of 2003 filed on or about 15/1/2003. Almost one and half years later the petitioners moved an application under Order 6 Rule 17 of C.P.C. for amendment of the Written Statement filed in the civil suit and this application at Exh.16 has been rejected by the learned 1st Ad-hoc Additional District Judge at Kolhapur on two grounds, namely, (a) the amendment sought changes the nature of the pleadings and thereby causes prejudice to the plaintiff and (b) the application was filed belatedly.

3. There is no doubt that the application was filed belatedly. As far as the ground regarding the change in nature of pleadings, Mr. Dani the learned counsel for the petitioners-defendants has drawn my attention to the pleadings in the plaint of the suit as well as the Written Statement filed by the petitioners. The plaintiff had approached the trial court on the basic premise that he had allowed the defendants, who are his near relations, to put up a construction on the vacant land for residential

purpose and occupy the same. The amendment sought to be made was nothing different from the pleadings already on record. However, the defendants proposed to argue that the permission so granted by the plaintiff amounted to an irrevocable licence. This is a point of law which could be taken up in the pending appeal and, therefore, the amendment sought in the Written Statement filed before the trial court was unwarranted.

4. The petition is, therefore, rejected by granting liberty to the petitioners-defendants to raise the point of law in the pending appeal, namely, whether the permission granted by the plaintiff amounted to an irrevocable licence?

(B.H. Marlapalle,J.)